

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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|--|---|---------------------------|
| Edward Terrell Chandler, |) | C/A No. 8:13-1020-TMC-JDA |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | REPORT AND RECOMMENDATION |
| |) | |
| Judge Brenda Carpenter, Edgefield County |) | |
| Detention Center's Judge; Officer Lamaz |) | |
| Robinson, Johnston Police Department's |) | |
| Investigator, |) | |
| |) | |
| Defendants. |) | |
| |) | |

Edward Terrell Chandler ("Plaintiff"), proceeding *pro se*, brings this civil action pursuant to 42 U.S.C. § 1983. Plaintiff alleges he is a pretrial detainee at the Edgefield County Detention Center ("ECDC"), and he files this action *in forma pauperis* under 28 U.S.C. § 1915. The Complaint is subject to summary dismissal.

Background

Plaintiff alleges he is accused of a crime committed in Johnston, South Carolina, and he was brought to South Carolina by extradition after having been incarcerated for twelve months in Georgia. Compl. 3. He seems to allege two detainers were placed on him from South Carolina for possession of a firearm during a violent crime and assault and battery of a high and aggravated nature, and he alleges in the back of the extradition papers there was a burglary charge. *Id.* When Plaintiff arrived in Edgefield, allegedly Defendant Lamaz Robinson, an investigator with the Johnston Police Department, served him with five warrants. *Id.* He alleges he appeared before Defendant Brenda B. Carpenter, a judge at the ECDC, for a bond hearing, but she denied setting a bond due to the pending burglary first degree charge. *Id.* Allegedly, Judge Carpenter set certain court

dates for hearings and stated that a circuit court judge would have to set a bond for Plaintiff. *Id.* Further, he alleges Judge Carpenter did not know which attorney was representing Plaintiff so she could not notify that person. *Id.* Plaintiff alleges he requested a hearing on his indictment, but Judge Carpenter refused, and she notified everyone but Plaintiff's attorney to be present. Compl. 4.

Plaintiff alleges he has not been provided discovery in the pending state criminal case, but his co-defendant has discovery. *Id.* He seems to allege that there is insufficient evidence against him related to the pending charges, and, as a result, his rights are being violated because he is being forced to stay in jail for crimes he did not commit rather than being released on a bond. *Id.*

Plaintiff seeks damages to compensate him for the stress he and his family have endured. Compl. 5. Also, he seems to request injunctive relief for this court to order his state criminal case to be "handled with justice" relating to his obtaining a bond and to the detainers placed against him. *Id.*

Standard of Review

Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) DSC, the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the district court. Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the district court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). Further, Plaintiff

is a prisoner under the definition in 28 U.S.C. § 1915A(c), and “seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). Thus, even if Plaintiff had prepaid the full filing fee, this court is charged with screening Plaintiff’s lawsuit to identify cognizable claims or to dismiss the Complaint if (1) it is frivolous, malicious, or fails to state a claim upon which relief may be granted or (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

As a *pro se* litigant, Plaintiff’s pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent standard, the *pro se* pleading remains subject to summary dismissal. The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff’s legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993), or “conjure up questions never squarely presented” to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

Discussion

This Complaint is filed pursuant to 42 U.S.C. § 1983, which “‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 “creates a private right of action to vindicate violations of ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Rehberg v. Paulk*, 132 S. Ct. 1497, 1501 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

Defendant Brenda B. Carpenter should be dismissed from this action because she has judicial immunity from suit. It is well settled that judges have absolute immunity from a claim for damages arising out of their judicial actions unless they acted in the complete absence of all jurisdiction. See *Mireles v. Waco*, 502 U.S. 9 (1991); *Stump v. Sparkman*, 435 U.S. 349, 351-364 (1978); see also *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985) (explaining that if a challenged judicial act was unauthorized by law, the judge still has immunity from a suit seeking damages). Whether an act is judicial or nonjudicial relates to the nature of the act, such as whether it is a function normally performed by a judge and whether the parties dealt with the judge in his judicial capacity. *Mireles*, 502 U.S. at 12. Immunity applies even when the judge’s acts were in error, malicious, or in excess of his authority. *Id.* at 12-13. Immunity presents a threshold question. See *Harlow v. Fitzgerald*,

475 U.S. 800, 818 (1982). Absolute immunity is “an immunity from suit rather than a mere defense to liability.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). In this case, Plaintiff alleges Judge Carpenter wrongfully refused to provide a bond for him, failed to notify his attorney of certain hearings, and refused to hold a hearing related to the indictment. Plaintiff is attacking Judge Carpenter’s judicial actions by alleging they were erroneous, and he seeks damages. Thus, judicial absolute immunity is squarely on point in this case, and Defendant Carpenter should be dismissed.

Moreover, although liberally construed Plaintiff may allege cognizable § 1983 claims against Defendant Robinson for false imprisonment or a due process violation and that he acted under color of state law, the claims should be dismissed based on *Younger* abstention. A federal court may not award injunctive relief that would affect pending state criminal proceedings absent extraordinary circumstances. In *Younger v. Harris*, the Supreme Court held that a federal court should not equitably interfere with state criminal proceedings “except in the most narrow and extraordinary of circumstances.” *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996). The *Younger* Court noted that courts of equity should not act unless the moving party has no adequate remedy at law and will suffer irreparable injury if denied equitable relief. *Younger v. Harris*, 401 U.S. 37, 43-44 (1971). From *Younger* and its progeny, the Court of Appeals for the Fourth Circuit has culled the following test to determine when abstention is appropriate: “(1) there are ongoing state judicial proceedings; (2) the proceedings implicate important state interests; and (3) there is an adequate opportunity to raise federal claims in the state proceedings.” *Martin Marietta Corp. v. Maryland Comm’n on Human Relations*, 38 F.3d 1392, 1396 (4th Cir.

1994) (citing *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)).

In this case, Plaintiff is clearly involved in an ongoing state criminal proceeding. The second criterion has been addressed by the Supreme Court: “[T]he States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief.” *Kelly v. Robinson*, 479 U.S. 36, 49 (1986). The Court also decided the third criterion in noting “that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights.” *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996) (quoting *Kugler v. Helfant*, 421 U.S. 117, 124 (1975)). Here, where Plaintiff seems to request certain injunctive relief such that this court order the state court to handle his criminal case fairly, to notice the insufficient evidence against him, and to give him a bond, he may raise these issues directly to the state court during the pending criminal case. Thus, this court finds that Plaintiff should be able to vindicate his federal constitutional rights in state court, and it is appropriate and recommended that this court abstain on Plaintiff's claims against Defendant Robinson.

Recommendation

Accordingly, it is recommended that the district court dismiss the Complaint in the above-captioned case *without prejudice*. See *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); and 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether

they are subject to summary dismissal). **Plaintiff's attention is directed to the important notice on the next page.**

May 2, 2013
Greenville, South Carolina

s/Jacquelyn D. Austin
United States Magistrate Judge

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).